IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7003 of 1998

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PARMAR JAGDISHKUMAR PARMABHAI

Versus

JT SECRETARY

Appearance:

MR MP PRAJAPATI for Petitioner No. 1

KL PANDYA, AGP for Respondent No. 1-3,5

MR VIPUL S MODI for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 07/04/2004

ORAL JUDGEMENT

1. The petitioner has challenged the order of the Deputy Secretary, State Government, dated 25th August 1998, whereby the Deputy Secretary has cancelled the

order granting licence in favour of the petitioner and ordering grant of licence in favour of the respondent no.4.

2. The respondent no.2 issued Notification dated 23.7.1996 inviting applications for opening fair-price shops in different Talukas of Banaskantha District, on the terms and conditions mentioned in the said Notification. The present petitioner is a resident village of Kanodar, Taluka Palanpur, District Banaskantha. According to the petitioner he is eligible for obtaining licence for opening a fair-price shop and therefore he had applied for the licence. The respondent no.4 herein had also applied for licence for opening a fair-price shop at village Kanodar.

3. According to the petitioner, the Consumer Protection Advisory Committee suggested the names of the petitioner and the respondent no.4 for granting licence for the fair-price shop at village Kanodar. Ultimately the District Supply Officer, by his order dated 17.7.1997 granted permission to the petitioner to open a fair-price shop at the said place on the terms and conditions mentioned in the said order.

4. The respondent no.4, therefore, preferred Appeal No.2/97 before the District Collector, Banaskantha. The petitioner appeared before the Collector and pointed out that there are serious allegations against the respondent no.4 and therefore he was not granted the licence. The Collector, Banaskantha, after hearing both the sides, has passed order dated 20th November 1997, whereby the appeal was dismissed and the order of District Supply Officer granting licence to the petitioner was confirmed. In pursuance of the same the petitioner has complied with all the formalities for commencement of the fair-price shop.

5. Being aggrieved by the order of the District Collector, the respondent no.4 preferred a Revision Application before the Deputy Secretary, which came to be allowed by order dated 25th August 1998. The Deputy Secretary recorded a finding that the respondent no.4 is a resident of Kanodar, whereas the petitioner is resident of Palanpur and that the petitioner is only SSC pass and respondent no.4 has passed 12th standard. The Deputy Secretary therefore held that respondent no.4 ought to have been preferred over the petitioner in the matter of grant of licence. It is under those circusmtances the present petition has been filed.

6. Mr. Prajapati, learned counsel for the petitioner, submitted that looking to the conclusion arrived at by the revisional authority, he could have remanded the matter back to the District Supply Officer for verification of the facts and for passing appropriate orders, and in any case he could not have cancelled the licence granted in favour of the petitioner and granted the same in favour of the respondent no.4.

7. I find substance in the contention raised on behalf of the petitioner. In my opinion, the revisional authority ought to have remanded the matter to the District Supply Officer to verify the facts and to pass fresh orders in light of such findings. Therefore, the ends of justice will be met if the concerned authority is directed to reconsider the matter and take a fresh decision in accordance with law.

9. In the result, petition succeeds partly. The impugned order dated 25th August 1998 passed by the Deputy Secretary is partly quashed and modified. The matter is remanded to the District Supply Officer for considering the same afresh and to take a decision in accordance with law. The petitioner shall produce a copy of this order before respondent no.3 within 15 days from today and the respondent no.3 shall take a decision in the matter within a period of two months thereafter. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

[K.S. JHAVERI, J.]

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